

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

10/03/2002

CLERK OF THE COURT
FORM V000A

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

CV 2002-010670

FILED: _____

BRENDA ROTH

BRENDA ROTH
13228 N 19TH WAY
PHOENIX AZ 85022-0000

v.

TANYA M LIPTAK

TANYA M LIPTAK
13236 N 19TH WAY
PHOENIX AZ 85022-0000

PHX CITY MUNICIPAL COURT
REMAND DESK CV-CCC

MINUTE ENTRY

This Court has jurisdiction of this appeal from an order continuing an Injunction Against Harassment pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement and this Court has considered and reviewed the record of the proceedings from the Phoenix City Court, and the Memoranda submitted by Appellant, Tanya Liptak. Appellee was given the opportunity to file a memorandum, but has chosen not to do so. It also appears to this court that Appellant's original memorandum was submitted directly to this court *ex parte*, returned to Appellant with instructions to provide a copy to Appellee, and returned by Appellant to this court with a certificate that copies were mailed to Appellee.

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IT IS ORDERED that the original Memorandum filed by Appellant directly with this division will be filed by the clerk of this court.

This case involves an Injunction Against Harassment obtained by Appellee, Brenda Roth, on May 1, 2002. After service of the Injunction, Appellant, Tanya Liptak requested a hearing. The Phoenix City Court held a hearing on the Injunction Against Harassment on May 28, 2002. Both parties testified at the hearing which was recorded.

The only issue raised by the Appellant concerns the sufficiency of the evidence to warrant continuation of the Injunction Against Harassment. When reviewing the sufficiency of the evidence, an appellate court must not re-weigh the evidence to determine if it would reach the same conclusion as the original trier of fact.¹ All evidence will be viewed in a light most favorable to sustaining a judgment and all reasonable inferences will be resolved against the Appellant.² If conflicts in evidence exists, the appellate court must resolve such conflicts in favor of sustaining the judgment and against the Appellant.³ An appellate court shall afford great weight to the trial court's assessment of witnesses' credibility and should not reverse the trial court's weighing of evidence absent clear error.⁴ When the sufficiency of evidence to support a judgment is questioned on appeal, an appellate court will examine the record only to determine whether substantial evidence exists to support the action of the lower court.⁵ The Arizona Supreme

¹ State v. Guerra, 161 Ariz. 289, 778 P.2d 1185 (1989); State v. Mincey, 141 Ariz. 425, 687 P.2d 1180, cert.denied, 469 U.S. 1040, 105 S.Ct. 521, 83 L.Ed.2d 409 (1984); State v. Brown, 125 Ariz. 160, 608 P.2d 299 (1980); Hollis v. Industrial Commission, 94 Ariz. 113, 382 P.2d 226 (1963).

² State v. Guerra, supra; State v. Tison, 129 Ariz. 546, 633 P.2d 355 (1981), cert.denied, 459 U.S. 882, 103 S.Ct. 180, 74 L.Ed.2d 147 (1982).

³ State v. Guerra, supra; State v. Girdler, 138 Ariz. 482, 675 P.2d 1301 (1983), cert.denied, 467 U.S. 1244, 104 S.Ct. 3519, 82 L.Ed.2d 826 (1984).

⁴ In re: Estate of Shumway, 197 Ariz. 57, 3 P.3rd 977, review granted in part, opinion vacated in part 9 P.3rd 1062; Ryder v. Leach, 3 Ariz. 129, 77P. 490 (1889).

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Court has explained in State v. Tison⁶ that "substantial evidence" means:

More than a scintilla and is such proof as a reasonable mind would employ to support the conclusion reached. It is of a character which would convince an unprejudiced thinking mind of the truth of the fact to which the evidence is directed. If reasonable men may fairly differ as to whether certain evidence establishes a fact in issue, then such evidence must be considered as substantial.⁷

This Court finds that the trial court's determination was not clearly erroneous and was supported by substantial evidence that warranted continuation of the Injunction Against Harassment.

IT IS ORDERED affirming the Phoenix City Court's order continuing the Injunction Against Harassment in full force and effect.

IT IS FURTHER ORDERED remanding this matter back to the Phoenix City Court for all further and future proceedings in this case, if any.

⁵ Hutcherson v. City of Phoenix, 192 Ariz. 51, 961 P.2d 449 (1998); State v. Guerra, supra; State ex rel. Herman v. Schaffer, 110 Ariz. 91, 515 P.2d 593 (1973).

⁶ SUPRA.

⁷ Id. At 553, 633 P.2d at 362.